

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

Crl.MC.No. 3164 of 2007()

CC.480/2000 of JUDL.MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY
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PETITIONER/ACCUSED IN CUSTODY:

AUGUSTINE GEORGE ALIA RAJU,
S/O.GEORGE, NELLAMTHADAM VEEDU,
CHENGALAM KARA, CHENGALAM VILLAGE,
KOTTAYAM.

BY ADV. SRI.G.HARIHARAN

RESPONDENTS/COMPLAINANT & STATE:

1. THOMAS JOSEPH,
S/O.JOSEPH, ODACKAL HOUSE,
MANNARKKAYOM, CHIRAKKADAVU.
2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 15/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3164 of 2007

Dated this the 15th day of October 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the Negotiable Instruments Act. The verdict of guilty, conviction and sentence have now become final. The petitioner was not being arrested by the police. Warrants of arrest issued by the learned Magistrate were not being returned. The respondent/complainant had, in these circumstances, come to this court with the prayer that there may be a direction to execute the warrants effectively. The S.H.O of the police station concerned was directed to appear before this court and explain why the warrant was not being executed. He had undertaken to execute the warrant. That Crl.M.C.No.2805/2007 now stands posted to 2/11/2007.

2. In the meantime, the petitioner has come to this court now. He has subsequently been arrested. He had already undergone the sentence of imprisonment till rising of court, it is submitted. Since he did not make the payment, he was sent to prison in execution of the default sentence. He is thus now alleged to be in prison.

3. According to the petitioner, he has paid the compensation amount due to the complainant. Default sentence is not liable to be continued now. The petitioner ought to be released from custody. It is, in these circumstances, that the petitioner along with the complainant's counsel have come before this court with a prayer to direct the learned Magistrate to release the petitioner from custody.

4. It is certainly for the petitioner/accused and the respondent/complainant to go before the learned Magistrate and satisfy the learned Magistrate that payment of the compensation amount has already been paid. The direction was only to pay the amount and not to deposit the amount, it is submitted. If payment of the compensation amount has already been made, there can be no question of the petitioner being compelled to undergo the default sentence any longer. But it is for the parties to go before the learned Magistrate and request the learned Magistrate to recall the warrant of commitment. If the petitioner and the complainant succeed in satisfying the learned Magistrate that payment has already been effected as directed by the courts, there can be no question of the petitioner undergoing any

further default sentence. The learned Magistrate, if so satisfied, must immediately direct release of the petitioner from custody.

5. I am satisfied that it is for the petitioner to approach the learned Magistrate and seek such relief. In the absence of adequate details, this court cannot grant the relief prayed.

6. This Criminal Miscellaneous Case is in these circumstances dismissed but with the observation that if the petitioner/accused and the respondent/complainant satisfy the learned Magistrate that the entire amount payable as compensation has already been paid, the learned Magistrate must forthwith take note of that fact and direct release of the petitioner from custody. After payment of the amount, there can be no question of the default sentence being executed against the petitioner. The position has made sufficiently clear in Girish v. Muthoot Capital Service (P) Ltd. [2007(1) KLT 16].

Hand over copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007